IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 157

R. B. PARDEN ET AL.,
Petitioners,

VS.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT ET AL.

BRIEF OF PETITIONERS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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A.

REPORT OF THE OPINION DELIVERED IN THE COURT BELOW

No opinion was rendered in the United States District Court for the Southern District of Alabama. The opinion of the United States Court of Appeals for the Fifth Circuit, which is the opinion to be reviewed in this cause, is reported as *Parden* v. *Terminal Railway of the Alabama State Docks Department*, 311 F.2d 727 (1963).

B.

GROUNDS OF JURISDICTION OF THIS COURT

1. Jurisdiction to review the judgment or decree in question by Writ of Certiorari in this Court is based upon Title 28, U.S.C., §1254(1), 62 Stat. 928;

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:"
>
> "(1). By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after the rendition of judgment or decree;"

2. The judgment entry of the United States Court of Appeals for the Fifth Circuit adverse to petitioners was made and entered on January 3, 1963. (R. 103)

3. Petitioners filed a timely petition for rehearing on January 23, 1963. (R. 104)

4. The order of the United States Court of Appeals for the Fifth Circuit overruling the application of petitioners for a rehearing in said Court was entered on February 27, 1963. (R. 104)

5. Petitioners filed their petition for Writ of Certiorari in this Court on May 24, 1963.

6. The order of this Court granting the petition for Writ of Certiorari was entered on October 14, 1963. (R. 105)

C.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Several statutes and constitutional provisions are involved, and since they are lengthy for the most part,

citations alone will be inserted at this point, and their pertinent texts are set forth in the appendix.

45 U.S.C., §51; 35 Stat. 65; 53 Stat. 1404.

45 U.S.C., §56; 35 Stat. 66, as amended in 36 Stat. 291, 36 Stat. 1167, 53 Stat. 1404, and 62 Stat 989.

45 U.S.C., §1; 27 Stat. 531.

45 U.S.C., §2; 27 Stat. 531.

Alabama Constitution of 1901, Amendment No. 12 (Mobile Port Amendment), 1940 Code of Alabama, (Recompiled, 1958), Volume 1, p. 351.

Alabama Constitution of 1901, Amendment No. 116 (State Works of Internal Improvement Along Navigable Waterways and Indebtedness Therefor), 1940 Code of Alabama (Recompiled, 1958), Volume 1, p. 431.

1940 Code of Alabama (Recompiled, 1958), Title 38, §17.

1940 Code of Alabama (Recompiled, 1958), Title 38, §45 (14, 16).

United States Constitution, Art. One, Section 8, cl. 3 (Commerce Power).

D.

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review in this cause may be stated as follows:

1. Is an employee of an interstate common carrier railroad to be deprived of his remedy of suit for personal injuries under the Federal Employers' Liability Act in a United States District Court because the railroad is owned and operated by the State of Alabama, of which the employee is a citizen, which state invokes a claim of immunity from such suits?

2. Whether the State of Alabama, admittedly engaged in the business of operating a common carrier railroad in interstate and foreign commerce, is amenable to suit in a United States District Court by its citizen-employees who seek to recover damages under the Federal Employers' Liability Act and/or the Federal Safety Appliance Acts for injuries sustained in performance of duties for such railroad.

E.

STATEMENT OF THE CASE

Petitioners were plaintiffs in separate suits filed in the United States District Court for the Southern District of Alabama, all of which were brought against the Terminal Railway of the Alabama State Docks Department, an agency of the State of Alabama, which admittedly is a common carrier railroad for hire doing business in interstate commerce between the several states and between the United States and foreign countries. All sought damages under the Federal Employers' Liability Act on account of injuries sustained by employees of Terminal Railway while engaged in their employment with Terminal Railway and while engaged in such interstate commerce. These employees were citizens of the State of Alabama. (R. 4-10)

Jurisdiction of the United States District Court was based upon the Federal Employers' Liability Act. 45 U.S.C., §51, *et seq.*, and particularly Section 6 thereof, 45 U.S.C., §56, which authorizes commencement of suits under the FELA in District Courts of the United States.

In each of such actions, the State of Alabama appeared specially and moved to dismiss the suits on the ground that the Terminal Railway is an agency of the State of

Alabama, and the State of Alabama could not be sued on these causes of action in the United States District Court. (R. 12-13, 26) In response to such motions to dismiss, the District Court dismissed all five suits (R. 58-60), and petitioners appealed to the United States Court of Appeals for the Fifth Circuit (R. 60), their cases being consolidated on appeal. (R. 61) The action of the District Court was affirmed by the Court of Appeals (R. 89-104), and petitioners' timely application for rehearing (R. 104) was overruled. (R. 104) Petition for Writ of Certiorari was filed in this Court on May 24, 1963 and granted on October 14, 1963. (R. 105)

The Terminal Railway was and is fully owned and operated by the State of Alabama (R. 25-26) and consists of about 50 miles of railroad track in the area adjacent to the Alabama State Docks at Mobile, Alabama. (R. 37; Pl. Exs. 1, 2, and 3, R. 44, 55-57) It serves, in addition to the State Docks, several industries located in the area, and it operates an interchange railroad yard where cars are exchanged between the Alabama, Tennessee and Northern Railroad Company, Louisville & Nashville Railroad Company, Southern Railway Company, and Gulf, Mobile & Ohio Railroad Company. (R. 40) The principal source of revenue of the Terminal Railway is for switching services rendered to other railroads, a charge being made for these services. (R. 43) About three to four hundred cars a day are handled by Terminal Railway in that portion of its operation. (R. 43) It also delivers freight to and from shipping which comes into or departs from the Alabama State Docks on vessels arriving from or departing to foreign countries. It owns its own equipment and employs 130 people. (R. 44) It has contracts and working agreements with the various railroad brotherhoods (R. 48), one of which provides regulations regarding the conduct of employees in divulg-

ing information concerning cases arising under the Federal Employers' Liability Act. (R. 58) It reports to the Interstate Commerce Commission concerning injuries sustained by its employees (R. 49-50), and keeps its accounts so as to comply with Interstate Commerce Commission regulations. (R. 52)

These actions[1] were brought under the theory that Terminal Railway is a common carrier by railroad engaging in commerce between the several states, and fails within the provisions of the Federal Employers' Liability Act, Title 45, U.S.C., §51, which states that **"Every common carrier by railroad** while engaging in commerce between any of the several states * * * shall be liable in damages to any person suffering injuries while he is employed by such carrier in such commerce * * * for such injury or death resulting, in whole or in part, from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery * * * or other equipment." (Emphasis supplied) Petitioners contend that the all inclusive word **"every"**, as used in the statute, includes railroads operated by states of the United States. Concurrent jurisdiction of actions under the statute is conferred upon state and federal courts by 45 U.S.C., §56.

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1. R. B. Parden filed two of the suits, one for personal injuries sustained July 13, 1958 (R. 7), and another for personal injuries sustained June 3, 1958 (R. 62); Otto Driskell sued for injuries sustained on July 22, 1958 (R. 68); Mrs. Elizabeth W. Wiggins and Frank O. Burge, Jr., as Administrators of the Estate of John Ervin Wiggins, deceased, sued for injuries sustained by Mr. Wiggins on November 15, 1958 (R. 74); and Aubrey E. Price sought damages for injuries he sustained on October 2, 1959. (R. 81) All of the suits were based upon 45 U.S.C., §51 *et seq.*, and two of them incorporated separate counts based upon violations of the Federal Safety Appliance Acts, 45 U.S.C., §1 *et seq.*

F.

BRIEF OF THE ARGUMENT

Proposition I.

The State of Alabama, by constitutional amendment and statute, is authorized to operate this railroad as though it were an ordinary common carrier.

Alabama Constitution, 1901, Amendment No. 12.
Alabama Constitution, 1901, Amendment No. 116.
1940 Code of Alabama (Recompiled, 1958), Title 38, §17.
1940 Code of Alabama (Recompiled, 1958), Title 38, §45 (14, 16).

Proposition II.

Every common carrier by railroad engaged in interstate commerce is under and subject to the Federal Employers' Liability Act and the Federal Safety Appliance Acts.

Title 45, U.S.C., §51, *et seq.*
Title 45, U.S.C., §1, *et seq.*

Proposition III.

A state operated railroad facility is under and subject to the Federal Safety Appliance Acts and the Railway Labor Act, and therefore should fall under the equally all embracing terms of the Federal Employers' Liability Act.

Title 45, U.S.C., §51, *et seq.*
Title 45, U.S.C., §1, *et seq.*
U. S. v. *California*, 297 U.S. 175, 80 L. Ed. 567, 56 S. Ct. 421.
California v. *Taylor*, 353 U.S. 553, 1 L. Ed. 2d 1034, 77 S. Ct. 1037.

Petty v. *Tennessee-Missouri Bridge Com.*, 359 U.S. 275, 3 L. Ed. 2d 804, 79 S. Ct. 785.
Maurice v. *State*, 43 Cal. App. 2d 270, 110 P.2d 706 (Cal. Dist. Ct. of App.).

Proposition IV.

The several states of the United States have granted to the federal government the exclusive right and power to regulate interstate commerce, and acting on such power, the congress has, by the Safety Appliance Acts and the Federal Employers' Liability Act, regulated the liability of interstate common carrier railroads to their employees, and any state laws or constitutional provisions, which conflict with these congressional enactments, are inoperative to the extent that they so conflict.

U. S. Constitution, Commerce Clause.
Title 45, U.S.C., §1, *et seq.*
Title 45, U.S.C., §51, *et seq.*
Cases cited under Proposition III.

G.

ARGUMENT

This case presents the unique situation of a railroad which is subject to the Federal Safety Appliance Acts (which refer to **"any common carrier engaged in interstate commerce by railroad"**) and the Railway Labor Act (which refers to **"any carrier by railroad**, subject to the Interstate Commerce Act"), yet it is effectively escaping the consequences of the Federal Employers' Liability Act which provides that **"every common carrier by railroad"** is subject to suit under the act in the District Courts of the United States.

In our statement of the facts, we have pointed out sufficient portions of the record to clearly show that the

Terminal Railway, an agency of the State of Alabama, is engaged in extensive profitable operations as a common carrier by railroad for hire in commerce between the several states and between the various states and foreign nations. There is no dispute on this point, and we consider it needless to go further into the facts in that regard in order to show that this railroad fits within the definition of railroads bound by the F.E.L.A.

The operation of this railroad is authorized by two amendments to the constitution of the State of Alabama, as well as by statutes enacted by the Alabama legislature. By virtue of Amendment No. 12 to the Alabama Constitution of 1901, the state is authorized to "engage in the work of internal improvement, or promoting, developing, constructing, maintaining and operating all harbors and sea ports within the state or its jurisdiction." (App. E) By virtue of Amendment No. 116 to the Alabama Constitution of 1901, the state is authorized to maintain and operate along navigable streams or waterways "all manner of docks, facilities, elevators, warehouses, water and rail terminals and other structures and facilities and improvements needful for the convenient use of same, in aid of commerce and use of the waterways of the state." (App. F) The legislature, through Title 38, §17 of the 1940 Code of Alabama (Recompiled, 1958), has authorized the Alabama State Docks Department to "acquire, control and operate a line of terminal railroads and to carry passengers, goods, wares and merchandise upon the tracks of such railroads and to connect with or cross any other railroad upon the payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads **as though it were an ordinary common carrier.**" (Emphasis supplied.) (App. G) Similar authority is expressed in Title 38, §45 (14, 16) of the 1940 Code of Alabama (Recompiled, 1958). (App. H)

Thus, the State of Alabama has placed this agency in the category of a common carrier by railroad engaging in commerce between the several states and between the states and foreign nations. It is in a profit making business for a good and legitimate purpose. By engaging in such business, it necessarily is subjected to certain obligations, duties and liabilities, among which is the duty to respond in damages to its injured employees under the terms of the federal statutes enacted for the benefit and protection of those employees.

The pertinent portions of the Federal Employers' Liability Act, Title 45, U.S.C., §51 (App. A) read as follows:

> "**Every common carrier by railroad** while engaging in commerce between any of the several states * * * or any of the states or territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * *
>
> "Any employee of a carrier, any part of whose duties as such employees shall be in furtherance of interstate or foreign commerce * * * shall be considered as entitled to the benefits of this chapter." (Emphasis supplied)

Title 45, U.S.C., §56 (App. B), provides that actions under the Federal Employers' Liability Act may be brought in a District Court of the United States.

By the Commerce Clause of the United States Constitution, Art. I, §8, Cl. 3 (App. I), the states have delegated to the federal government the exclusive power to regulate commerce with foreign nations and among the several states. The Congress has exercised the power thus delegated by passing several acts relating to interstate common carrier railroads, regulating the operation of such railroads

through the Railway Labor Act, the Safety Appliance Acts, and the Federal Employers' Liability Act. These acts, by their terms, do not exclude from their operation a railroad operated by a sovereign state, but, to the contrary, apply to **"every"** common carrier or **"any"** common carrier. They are all inclusive in scope. Congress has thus prescribed the conditions under which any entity may engage in the interstate railroad business as a common carrier. The State of Alabama, by establishing an agency to operate such a railroad, has thereby subjected such railroad to all of the obligations, liabilities and regulations fixed by Congress upon such railroads. Congress has said that such railroads are liable to their employees under the Federal Employers' Liability Act, and has not excepted state operated railroads from the provisions of the act. In effect, Congress so regulated interstate commerce as to permit the State of Alabama to **conditionally** engage in interstate commerce as a common carrier railroad, and one of those conditions is that it is amenable to suit in a United States District Court by an employee who is injured under circumstances falling within the Federal Employers' Liability Act. That condition was accepted by Alabama, and in so doing, the State of Alabama subordinated any rights and immunities which it might otherwise have had to the laws of the United States applicable to the operation of an interstate common carrier railroad.

The State of California operates a similar railroad facility known as the "State Belt Railroad," and this Court, in *U. S.* v. *California*, 297 U.S. 175, 80 L. Ed. 567, 56 S. Ct. 421, held that railroad to be subject to the provisions of the Federal Safety Appliance Act. (The facts there are distinguishable from those in the cases at bar in that the United States brought suit to recover the statutory penalty for a violation of the Safety Appliance Act.) The Court

pointed out that it was considered unimportant to say whether the state conducts its railroads in its "sovereign" or in its "Private" capacity, and further, that the only question necessary to be considered is whether the exercise of the power to operate the railroad must be in subordination to the power to regulate interstate commerce, which the states have granted to the federal government. The Court further said:

> "The sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government in the constitution. (297 U.S. 184, 80 L. Ed. 572)
>
> * * *
>
> "California, by engaging in interstate commerce by rail, has subjected itself to the commerce power and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them. **The federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances.** * * *. The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. **No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a privately-owned carrier, brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection.** 297 U.S. 185, 80 L. Ed. 573)
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> * * *
>
> "Since the section which, as we have held, imposes the liability upon state and privately-owned carriers alike, also provides the remedy and designates the manner and the court in which the remedy is to be

pursued, we think the jurisdictional provisions are as applicable to suits brought to enforce the liability of states as to those against privately-owned carriers, and that the district court had jurisdiction." (297 U.S. 188, 80 L. Ed. 575) (Emphasis supplied).

The same State Belt Railroad was involved in *California* v. *Taylor*, 353 U.S. 553, 1 L. Ed. 2d 1034, 77 S. Ct. 1037. Again the facts are distinguishable in that the action was brought by employees of the railroad to compel the National Railroad Adjustment Board to take jurisdiction of plaintiffs' claims under a collective labor agreement. The State of California intervened, contending that the Railway Labor Act, 45 U.S.C., §§151, et seq., does not apply to a common carrier by railroad owned by a sovereign state and operated in interstate commerce.

The Court pointed out that the Railway Labor Act applies to "**any** carrier by railroad, subject to the Interstate Commerce Act * * *." (The Federal Employers' Liability Act uses the word "every" rather than "any" and does not mention the Interstate Commerce Act.) It cited *U. S.* v. *California, supra*, where it was unequivocably held that the Safety Appliance Act was applicable to this state operated railroad, pointed out that other courts have ruled that the Federal Employers' Liability Act, "the coverage of which corresponds to that of the Safety Appliance Act," was applicable to public railroads, and held that the fact that Congress chose to phrase the coverage of the Railway Labor Act in all-embracing terms indicates that state railroads were included within it.

California contended that Congressional intent to include state railroads within the act was doubtful because certain other federal statutes governing employer-employee relationships expressly exempted employees of the United

States or of a state. To that argument, the Supreme Court said:

> "We believe, however, that this argument cuts the other way. When Congress wished to exclude state employees, it expressly so provided. Its failure to do likewise in the Railway Labor Act indicates a purpose not to exclude state employees." (353 U.S. 564, 1 L. Ed. 2d 1041)

California contended that Congress has no constitutional power to interfere with the sovereign right of a state to control its employment relationships in connection with the operation of such railroad. Citing *U. S.* v. *California, supra,* the Court said that the State of California, though acting in its sovereign capacity in operating the railroad, necessarily so acted in subordination to the power to regulate interstate commerce which has been specifically granted to the federal government and, therefore, became subject to the Safety Appliance Act and the Railway Labor Act. "If California, by engaging in interstate commerce by rail, subjects itself to the commerce power so that Congress can make it conform to federal safety requirements, it also has subjected itself to that power so that Congress can regulate its employment relationships." (353 U.S. 568, 1 L. Ed. 2d 1044).

Thus it is demonstrated that state operated common carrier railroads are subject to two of the three primary acts of Congress which regulate and govern the rights of railroad employees as against their employers. The third of such acts is the Federal Employers' Liability Act. California's state courts have recognized that the F.E.L.A. applies to its State Belt Railroad. *Maurice* v. *State,* 43 Cal. App. 2d 270, 110 P.2d 706 (Cal. Dist. Ct. of App.). It is inconceivable that this clearly established pattern should be varied so as to hold that a state which has chosen to be-

come a common carrier, in every sense within the definition set out in the Federal Employers' Liability Act, is immune from liability thereunder in the federal courts.

In the court below, opposing counsel relied successfully upon constitutional and inherent immunity of a sovereign state from suits against it, and presumably the same contention will be made here. We respectfully submit that by engaging in such a commercial enterprise as is demonstrated by the record in this case, the entry into which Congress has made conditioned upon the acceptance of the responsibilities and liabilities imposed by the Federal Employers' Liability Act, the State of Alabama waived and relinquished any immunity which it otherwise might have had. *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 3 L. Ed. 2d 804, 79 S. Ct, 785.

The Petty case involved an action brought under the Jones Act against a bi-state corporation created by the States of Tennessee and Missouri with the approval of Congress. The Commission claimed immunity to suit under the Jones Act by virtue of the Eleventh Amendment. This Court held that in creating the agency, the States of Tennessee and Missouri waived any immunity which they otherwise might have had. The case was decided upon the basis of the corporate provisions and the act of Congress which approved the creation of the bi-state agency but it is nevertheless persuasive authority for the position of the plaintiffs in these cases. To the contention that the acceptance of jurisdiction of such a case was an enlargement of the jurisdiction of the federal courts, the Court said:

> "This is not enlarging the jurisdiction of the federal courts but only recognizing as one of its appropriate applications the business activities of an agency active in commerce and maritime matters." (359 U.S. 281, 3 L. Ed. 2d 810).

As to the right of the plaintiff to recover under the Jones Act, the Court said:

> "Finally we can find no more reason for excepting state or bi-state corporations from 'employer' as used in the Jones Act than we could for excepting them either from the Safety Appliance Act (United States v. California, 297 U.S. 175, 80 L. Ed. 567, 56 S. Ct. 421) or the Railway Labor Act (California v. Taylor, 353 U.S. 553, 1 L. Ed. 2d 1034, 77 S. Ct. 1037). In the latter case we reviewed at length federal legislation governing employer-employee relationships and said 'When Congress wished to exclude state employees, it expressly so provided.' 353 U.S. at 564. The Jones Act (46 U.S.C., §688) has no exceptions from the broad sweep of the words 'Any seaman who shall suffer personal injury in the course of his employment may' etc. The rationale of United States v. California, (U.S.) supra, and California v. Taylor, (U.S.) supra, makes it impossible for us to mark a distinction here and hold that this bi-state agency is not an employer under the Jones Act." (359 U.S. 282, 3 L. Ed. 2d 810)

The record shows that Terminal Railway has recognized that it is subject to the requirements of the Interstate Commerce Commission. It further shows that in the agreement setting out rules governing Terminal Railway employees, it recognized that its employees may sustain injury under circumstances which will give rise to a cause of action under the Federal Employers' Liability Act. Paragraph No. 1308 of this agreement is set forth on page 58 of the record. This rule regulating the making of statements concerning accidents, claims or suits is obviously worded so as to avoid conflict with the provisions of Title 45, U.S.C., §60, which prohibits any common carrier from making any contract, rule, or regulation, which would have the purpose, intent, or effect of preventing employees from

voluntarily furnishing information concerning a case arising under the Federal Employers' Liability Act.

In view of these authorities, it appears unquestionable that these appellants have rights under the Federal Safety Appliance Act and the Federal Employers' Liability Act. Somewhere there must be a remedy for the enforcement of those rights. It is axiomatic that for every right there is a remedy. The remedy is prescribed in Section 6 of the Federal Employers' Liability Act (Title 45, U.S.C., §56), where jurisdiction of causes of action under the Act is given to district courts of the United States with proper venue.

The effort to deprive appellants of their remedy on the basis of constitutional or inherent immunity of sovereign states from suits is but avoidance of the issue. By bringing its Terminal Railway within the provisions of the Federal Employers Liability Act, the State of Alabama subjected it to all of the provisions of that Act, and conferred upon appellants all rights prescribed in the Act. In order to determine whether immunity applies, we must first look to the right asserted. The remedy of suit against the employer in a United States district court is a necessary and vital part of the rights afforded appellants by the Act, and therefore, we do not reach the question of immunity.

H.

CONCLUSION

The position of petitioners may be summarized as follows:

1. In delegating to the federal government the exclusive power to regulate interstate commerce, the states vested in Congress the right to regulate all interstate railroads, whether state or privately operated.

2. In so doing, the states necessarily surrendered any sovereign immunity which may conflict with valid regulations of Congress which are applicable to state operated railroads.

3. Congress having made the FELA applicable to "every common carrier by railroad", which necessarily includes state operated railroads, states thereafter choosing to engage in an interstate railroad business must be considered as having entered into such enterprise in full subordination to the all-embracing terms of the FELA, a portion of which subjects such railroad to suits in District Courts of the United States.

These appellants, if the Court of Appeals is correct, belong to the only class of railroad employees in the United States who have no recourse against their employer for injuries sustained in the course of their employment. The loss of limb or life due to negligence or violation of the Safety Appliance Acts by this railroad must not be permitted to go uncompensated. Otherwise, to its employees, the laws enacted for their protection are meaningless.

Respectfully submitted,

.....,

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing brief and argument of appellants, postage prepaid and correctly addressed, to each of the following: Honorable Richmond M. Flowers, Attorney General of the State of Alabama, Montgomery, Alabama and Mr. Willis C. Darby, Jr., Attorney at Law, First National Bank Building, Mobile, Alabama.

This the ..... day of December, 1963.

.....

AL G. RIVES,

Attorney for Appellants.

APPENDIX

APPENDIX A

45 U.S.C., § 51

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. Apr.

22, 1908, c. 149, § 1, 35 Stat. 65; Aug. 11, 1939, c. 685, § 1, 53 Stat. 1404.

APPENDIX B

45 U.S.C., § 56

§ 56. Actions; limitations; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States. Apr. 22, 1908, c. 149, § 6, 35 Stat. 66; Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, c. 685, § 2, 53 Stat. 1404; June 25, 1948, c. 646, § 18, 62 Stat. 989.

APPENDIX C

45 U.S.C., § 1

§ 1. Driving-wheel brakes and appliances for operating train-brake system

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such

traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose. Mar. 2, 1893, c. 196, § 1, 27 Stat. 531.

APPENDIX D

45 U.S.C., § 2

§ 2. Automatic couplers

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars. Mar. 2, 1893, c. 196, § 2, 27 Stat. 531.

APPENDIX E

Alabama Constitution of 1901, Amendment 12

MOBILE PORT AMENDMENT.

Section 93. The state shall not engage in works of internal improvement, nor lend money or its credit in aid of such, except as may be authorized by the Constitution of Alabama or amendments thereto; nor shall the state be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation, except as may be expressly authorized by the Constitution of Alabama, or amendments thereto; but when authorized by laws passed by the legislature the state may appropriate funds to be applied to the construction, repair,

and maintenance of public roads, highways and bridges in the state; and when authorized by appropriate laws passed by the legislature the state may at a cost of not exceeding ten million dollars engage in the work of internal improvement, or promoting, developing, constructing, maintaining, and operating all harbors and seaports within the state or its jurisdiction, provided, that such work or improvement shall always be and remain under the management and control of the state, through its state harbor commission, or other governing agency. The adoption of this amendment shall not affect in any manner any other amendment to the Constitution of Alabama which may be adopted pursuant to any act or resolution of this session of the legislature.

APPENDIX F

Alabama Constitution of 1901, Amendment 116.

STATE WORKS OF INTERNAL IMPROVEMENT ALONG NAVIGABLE WATERWAYS AND INDEBTEDNESS THEREFOR.

In addition to the authority heretofore granted it by section 93 of this Constitution as amended, and notwithstanding the provisions of section 213 of this Constitution as amended, and when authorized by appropriate laws passed by the legislature, the state may, at a cost of not exceeding an additional ten million dollars engage in works of internal improvement by promoting, developing, constructing, maintaining and operating along navigable streams or waterways now or hereafter existing within the state all manner of docks, facilities, elevators, warehouses, water and rail terminals and other structures and facilities and improvements needful for the convenient use of the same, in aid of commerce and use of the water-

ways of the state; provided that any such work or improvements shall always be and remain under the management and control of the state through the Alabama state docks department or other state governing agency. When authorized by appropriate laws passed by the Legislature, the state may become indebted in an aggregate principal amount of not exceeding $10,000,000 for the purpose of carrying out the provisions of this amendment and may cause to be issued its general direct obligation bonds for the repayment of such indebtedness and interest thereon and pledge the faith and credit of the state thereto.

APPENDIX G

1940 Code of Alabama (Recompiled 1958)

Title 38, § 17

§ 17. State may acquire, etc., terminal railroads.—The state through the department shall have the power and authority to acquire, own, lease, locate, install, construct, hold, maintain, control and operate at seaports a line of terminal railroads with necessary sidings, turn outs, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliance necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the tracks of such railroads or other conveyances. And the state, acting through the said department, shall have the right and authority to make agreements as to scale of wages, seniority and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the opera-

tion of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said department exercise the authority herein given then in such event it shall be the duty of the said department to make such agreements with said employees hereinabove specified, in accordance with the act of congress known as the Railway Labor Act (U.S.C., Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The state, acting through the said department, shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon the payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1923, p. 330; 1927, p. 1; 1935, p. 821; 1936, Ex. Sess. p. 57.)

APPENDIX H

1940 Code of Alabama (Recompiled 1958)

Title 38, § 45 (14, 16)

§ 45 (14). Authority of state and state docks department.—In addition to the authority granted to the state of Alabama by the provisions of section 93 of the Constitution of Alabama as amended, and any other laws of this state, the state is hereby expressly authorized and empowered to engage in works of internal improvement by promoting, developing, constructing, maintaining and

operating along navigable rivers, streams or waterways now or hereafter existing within this state, all manner of dock facilities, elevators, compresses, warehouses, water and rail terminals, and other structures and facilities and improvements of every kind needful for the convenient use of same, in aid of commerce and use of the waterways of this state, provided, however, that all such works, improvements and facilities shall always be and remain under the management and control of the Alabama state docks department. The Alabama state docks department shall be the agency of the state under which the state shall accomplish all the purposes of this chapter and the acquisition, construction, maintenance and operation of all the improvements and facilities acquired or constructed or enlarged pursuant to the provisions of this chapter. (1957, p. 409, § 1.)

§ 45 (16). Authority to acquire, construct, maintain, etc., facilities.—Through the Alabama state docks department, the state, in engaging in the works of internal improvements authorized by this chapter, shall have the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, control and operate along navigable rivers, streams or waterways and at river ports or landings along navigable rivers, streams or waterways now or hereafter existing within the state, wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, improvements and water and rail terminals and such structures and facilities as may be needful for convenient use of the same, in aid of commerce and use of navigable waterways of the state, to the fullest extent practical and as the state docks department shall deem desirable or proper. This authority shall include dredging of approaches to any facilities acquired, erected, maintained or operated pursuant to this chapter; provided, however,

that before the state docks department shall exercise the authority invested in it hereby, the director of state docks shall first submit plans, including estimates of cost, prepared by competent engineers or architects, and a survey made by competent independent and professional engineers showing the economic feasibility of exercising its authority, to the governor for his approval or disapproval in reference thereto, and, as to dredging, the state docks director shall likewise confer with proper United States authorities; provided, the state docks department shall have no authority to condemn or acquire by exercise of the right of eminent domain any privately owned ports, terminal, docks or loading facilities located on any navigable river or stream except at the port of Mobile. (1957, p. 409, § 3.)

APPENDIX I

United States Constitution, Art. I, § 8, cl. 3

(Commerce Power)

"The Congress shall have the Power * * * To regulate Commerce with foreign Nations and among the several States * * *"